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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,281	03/12/2004	Murat Quadir	LOREAL 3.0-005 I	7212
51569	7590	07/13/2006	EXAMINER	
L'OREAL USA 30 TERMINAL AVENUE CLARK, NJ 07066			ZHANG, NANCY L	
			ART UNIT	PAPER NUMBER
			1614	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,281

Applicant(s)

QUADIR, MURAT

Examiner

Nancy L. Zhang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-51 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species:

- (A) A shampoo comprising POSS and at least one personal care ingredient
- (B) A nail polish comprising POSS and at least one personal care ingredient
- (C) A conditioner comprising POSS and at least one personal care ingredient
- (D) A mascara comprising POSS and at least one personal care ingredient
- (E) A personal care product that is not (A)-(D) comprising POSS and at least one personal care ingredient

The species are independent or distinct because personal care products specialized in different areas need to include different contents, to have different properties and to meet different standards. For example, a shampoo should be rinsed away easily with water whereas a nail polish should not be rinsed away easily with water. Searching for these species are different subject matter search.

In addition, the applicant is required to make further species election as follows for the structure of POSS in the product:

(a) POSS has the structure of Formula (I); a specific group for each of R_1 - R_8 is required

(b) POSS has the structure of Formula (IIA); a specific group for each of R_1 - R_{10} is required

(c) POSS has the structure of Formula (IIB); a specific group for each of R_1 - R_{12} is required

(d) POSS has the structure of Formula (IIC); a specific group for each of R_1 - R_{10} is required

(e) POSS has the structure of Formula (IID); a specific group for each of R_1 - R_{12} is required

(f) POSS has the structure of Formula (IIE); a specific group for each of R_1 - R_{10} is required

(g) POSS has the structure of Formula (III); a specific group for each of R_1 - R_6 is required

(h) POSS has a structure that is not of Formula in (a)-(g)

Further species election is required for the amount of POSS present in the product.

Further species election is also required for the amount of personal care ingredient present in the product.

These species are distinct because they are different compounds having different three dimensional cage structures with different degrees of rigidity for the cage structure. Different amount of POSS present in the product would result in different effectiveness of providing a desired degree of a predetermined personal care property for the product. Different amount of personal care ingredient present in the product would need different amount of POSS to be also present in the product.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently,

Claim 43 is directed to species (A);

Claim 44 is directed to species (B);

Claim 45 is directed to species (C);

Claim 46 is directed to species (D);

Claims 1-12 and 47-51 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

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requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nancy L. Zhang whose telephone number is (571)-272-8270. The examiner can normally be reached on Mon.- Fri. 8:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NLM 7/6/2006
NLZ

Ardin H. Marschel 7/9/06
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER